

**REMARKS**

Claims 4-7 are pending.

The Examiner has maintained the obviousness-type double patenting rejection of claims 1-7 over co-pending Application Nos. 10/297,173, 11/000,007, and 11/014,779.

With respect to the provisional obviousness-type double patenting rejection, MPEP 804 states that “a provisional rejection *can* be addressed by both the applicant and the examiner without waiting for the first patent to issue” (emphasis added). Therefore, Applicants can also choose to defer a response to the provisional rejection until one of the applications is issued as a patent. Applicants respectfully defer the response to the provisional obviousness-type patenting rejection over U.S. Appln. Nos. 10/297,173, 11/000,007, and 11/014,779 at the present time.

Claims 4-7 have been rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,845,225 to Toyoda et al. (“Toyoda”).

Toyoda has a filing date of July 24, 2003 (§ 102(e) date).

In order to effectively remove a reference using a 37 C.F.R. § 1.131 declaration, the declaration must provide certain factual information and must be accompanied by drawings, notes or records that support the factual information. Specifically, the declaration must show facts that establish that 1) the invention was reduced to practice prior to the publication or filing date of the reference or 2) the invention was conceived prior to the publication or filing date of the reference and was subsequently reduced to practice with due diligence from the date of conception.

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Applicants submit a Declaration under 37 C.F.R. § 1.131 executed by Mr. Makoto Namikawa and Mr. Yoshio Terada, the inventors of the present application, along with a sworn English language translation of JP 2001-309340, which includes examples, as evidence of prior date of invention to remove Toyoda as prior art relative to claims 4-7 of the present application.

The filing of a patent application serves as conception and reduction to practice of the subject matter described in the application. Applicants submit that JP 2001-309340 was filed on October 5, 2001 and Applicants submit that the filing of JP 2001-309340 is evidence of reduction to practice pursuant to 35 U.S.C. § 104 and MPEP 715.07(c), prior to July 24, 2003 (the filing date of Toyoda).

In view of the foregoing, it is clear that Toyoda is not prior art to the present application because the claimed invention was reduced to practice prior to the filing date of Toyoda. Accordingly, Applicants respectfully request that the Examiner withdraw the § 102 rejection of claims 4-7 based on Toyoda.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

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The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

  
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